IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 6083

MARVIN GLENN ANDREWS, et al,
Petitioners,

vs.

THE STATE OF OREGON,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITIONS FOR WRITS OF CERTIORARI

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AUTHORITIES

State v. Gann, 89 Or Adv Sh 853, 463 P2d 570 (1969)

United States Constitution, Sixth Amendment

United States Constitution, Fourteenth Amendment

Oregon Constitution, Art I, Sec. 11

JURISDICTION

Petitioners assert that the jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3). The respondent does not agree with petitioners' apparent contentions that Article I Sec 11 of the Constitution of the State of Oregon is repugnant to United States Constitution amendments VI and XIV.

Neither the United States Constitution nor the Constitution of the State of Oregon requires a unanimous jury verdict for a finding of guilty in a criminal trial.

Article I Sec 11 of the Oregon Constitution, which provides for criminal conviction in non-capital cases by a determination of ten members of a twelve-man jury, is not in conflict with the United States Constitution or any decision of this Court. Thus, it is submitted that no federal question of substance is here presented.

ARGUMENT

In STATE v. GANN, 89 Or Adv Sh 853, 463 P2d 570 (1969), the Oregon Supreme Court directly addressed the question presented here. Mr. Justice Denecke, writing for the majority, said:

> "* * (b)ecause a unanimous verdict is not a 'fundamental right, essential to a fair trial,' we hold that the Oregon Constitution is not in violation of the Fourteenth Amendment." 463 P2d 577.

State v. Gann, 89, Or Adv Sh 853, 463 P2d 570 (1969), deals primarily and extensively with the question of whether there is a constitutional requirement for a unanimous verdict in jury trials, and states the position of the Oregon Supreme Court. Respondent relies on this position and submits that the petitions for writs of certiorari should be denied.

Respectfully submitted,

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